

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 SS-15 SSO-00 NSCE-00 CIAE-00 INR-10
NSAE-00 INRE-00 L-03 HA-05 CA-01 SCS-06 JUSE-00
SP-02 /055 W
-----108499 251552Z /42

O 251455Z AUG 78
FM AMEMBASSY ANKARA
TO SECSTATE WASHDC IMMEDIATE 3119
INFO AMCONSUL ADANA
AMCONSUL ISTANBUL
AMCONSUL IZMIR

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E.O. 11652: N/A
TAGS: CARR, TU
SUBJECT: TURKISH PRISONER TRANSFER TREATY NEGOTIATIONS:
REMAINING ISSUES

REF: A) ANKARA 6105, B) ANKARA 6058

1. FOLLOWING FOURTH DAY OF NEGOTIATIONS (SEPTEL)
ONLY TWO ISSUES APPEAR TO REQUIRE RESOLUTION BEFORE
AGREEMENT CAN BE REACHED ON A TEXT.

2. THE FIRST ISSUE INVOLVES THE VERIFICATION OF CONSENT
HEARING REQUIRED BY SECTION 4108 OF TITLE 18. TURKISH
DELEGATION HAS INDICATED THAT THERE IS NO POSSIBILITY
OF THEIR INCORPORATING IN THE TREATY THE USUAL
PROVISION THAT PERMITS US TO SEND A US MAGISTRATE
ABROAD TO CONDUCT SUCH A HEARING. RELUCTANCE OF TURKS
TO PERMIT FOREIGN JUDICIAL OFFICIAL TO PERFORM ACTS
IS UNDERSTANDABLE, IN VIEW OF HISTORY OF CAPITULATIONS.
EMBASSY AGREES THAT IT WOULD BE COUNTERPRODUCTIVE TO INSIST
FURTHER ON THIS POINT.

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3. THERE IS NO REQUIREMENT IN U.S. LAW THAT VERIFICATION
BE PERFORMED ONLY BY A MAGISTRATE. SECTION 4108 (A) PERMITS
A JUDGE OF THE UNITED STATES SPECIFICALLY TO DESIGNATE ANY
CITIZEN. IT FURTHER PROVIDES THAT THE DESIGNATION OF A
CITIZEN WHO IS AN EMPLOYEE OR OFFICER OF A DEPARTMENT OR
AGENCY OF THE UNITED STATES SHALL BE WITH THE APPROVAL OF THE

HEAD OF THAT DEPARTMENT OR AGENCY. IN DISCUSSIONS TURKS, TO WHOM WE HAVE GIVEN COPY OF IMPLEMENTING LEGISLATION, SUGGESTED THAT THEY WOULD HAVE NO OBJECTION TO VERIFICATION BY CONSULAR OFFICER. EMBASSY AND ALL MEMBERS OF DELEGATION RECOMMEND THAT VERIFICATION ISSUE BE RESOLVED BY DEPARTMENT'S AGREEING IN PRINCIPLE TO APPROVE JUDICIAL DESIGNATION OF CONSULAR OFFICER IN TURKEY WHO HAS NOT PREVIOUSLY BEEN INVOLVED IN CASE, TO SERVE AS VERIFICATION OFFICER IN CASES UNDER TURKISH TREATY. UNLESS OTHERWISE INSTRUCTED BY OPENING OF BUSINESS ON MONDAY, DELEGATION WILL CONSIDER THIS ASPECT OF ISSUE RESOLVED. TO PROTECT THIS SOLUTION IT WILL PROPOSE THAT EXCHANGE OF LETTERS AT TIME OF SIGNING OF ANY TREATY CONFIRM UNDERSTANDING THAT CONSULS DESIGNATED UNDER LAW OF REQUESTED STATE MAY VERIFY CONSENT.

4. SECOND ISSUE INVOLVES RESOLUTION OF SUBSTITUTED SENTENCE PROBLEM. ONLY STICKING POINT TO TURKISH ACCEPTANCE OF OUR TWO TRACK PROPOSAL (WHICH WOULD PERMIT US TO CONTINUE OUR PRACTICE OF ENFORCING FOREIGN SANCTIONS WITHOUT THE TRANSMUTATION OF THE FOREIGN SANCTIONS WITHOUT THE TRANSMUTATION OF THE FOREIGN SANCTIONS INTO A UNITED STATES SENTENCE BY A DECISION OF A U.S. COURT) APPEARS TO BE THEIR INSISTANCE THEY BE INFORMED PRIOR TO APPROVING AN INDIVIDUAL TRANSFER OF THE PERIOD FOR WHICH THE SANCTION IS TO BE ENFORCED.

5. OUR PROBLEM IN MEETING THAT REQUEST IS THAT THE LIMITED OFFICIAL USE

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PAROLE COMMISSION, WHICH ULTIMATELY MAKES THAT DECISION, REQUIRES APPEARANCE OF THE OFFENDER AT A HEARING CONDUCTED BY ITS OFFICIALS BEFORE REACHING ITS DECISION. ALTHOUGH SO FAR AS THE DELEGATION IS AWARE THERE IS NO LEGAL OBSTACLE UNDER UNITED STATES LAW TO SUCH A HEARING BEING CONDUCTED IN TURKEY, A DECISION TO HOLD SUCH HEARINGS OUTSIDE THE UNITED STATES MIGHT WELL REQUIRE AMENDMENT OF THE COMMISSION'S REGULATIONS. IN ANY EVENT, IF THIS WERE DONE FOR TURKEY, THERE WOULD BE PRESSURE TO DO THE SAME THING IN OTHER COUNTRIES. THE TURKS HAVE SUGGESTED THAT THE PERSONAL APPEARANCE REQUIREMENT BE WAIVED BY THE COMMISSION AND THAT THE OFFENDER BE EXAMINED BY A TURKISH JUDGE UNDER LETTERS ROGATORY. THIS SUGGESTION APPEARS TO RAISE MORE PROBLEMS FOR THE COMMISSION THAN IT RESOLVES. ON THE OTHER HAND, IT IS DOUBTFUL THAT EVEN IF THE COMMISSION SHOULD DECIDE TO SEND ONE OR MORE OF ITS OFFICIALS ABROAD TO CONDUCT A HEARING, THE TURKS WOULD ALLOW THEM TO DO SO SINCE IT WOULD PROBABLY VIEW THE HEARING AS A QUASI JUDICIAL ONE INFRINGING ON TURKISH SOVEREIGNTY. DELEGATION HOPES WE CAN AVOID HAVING TO GRAPPLE WITH THESE DIFFICULT PROBLEMS BY ADOPTING ONE OF THE COURSES OF ACTION OUTLINED PARAS 6 AND 7.

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6. DELEGATION BELIEVES MOST PROMISING VEHICLE TO RESOLVE
IMPASSE WOULD BE PROPOSAL BASED ON ARTICLE 39 PARA 2 OF
EUROPEAN CONVENTION OF WHICH TURKEY IS SIGNATORY. THAT
PROVISION PERMITS A COUNTRY WHOSE COURTS REQUIRE PRESENCE
OF OFFENDER BEFORE SUBSTITUTING SENTENCE TO COMMUNICATE
AGREEMENT TO SUBSTITUTE SENTENCE WITH LENGTH OF SENTENCE
TO BE COMMUNICATED AFTER RETURN. GIVEN TURKS CONCERN
THAT AUTHORITY UNDERTAKING TO ENFORCE SANCTION IN U.S.
IS NOT A COURT AND WILL NEVER ISSUE A "DECISION"
SUBSTITUTING A SENTENCE, THEY WOULD LIKE BEFORE TRANSFER
TO HAVE SOME FIRM INDICATION OF EFFECT TO BE GIVEN TO
THEIR SENTENCE. WE WOULD PROPOSE TO MEET THIS NEED BY
UNDERTAKING TO GIVE THEM MANDATORY RELEASE DATE IN ALL
CASES PRIOR TO TRANSFER. WE WOULD ALSO PARALLEL TEXT OF
ARTICLE 39 (2) BY PROVIDING TEXT OF PAROLE COMMISSION
DECISION ON COMPLETION OF HEARING IN THE UNITED STATES.

7. IF TURKS SHOULD REJECT TEXT BASED ON ARTICLE 39
PARA 2, EMBASSY AND DELEGATION RECOMMEND LATTER BE
AUTHORIZED IN ITS DISCRETION TO GO BEYOND PROPOSAL
OUTLINED PARA 6 BY OFFERING TO INCORPORATE IN LETTERS
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TO BE EXCHANGED BETWEEN EMBASSY AND MFA AT TIME OF
SIGNING OF TREATY AN UNDERSTANDING THAT PRIOR TO TRANSFER
OF EACH U.S. CITIZEN EMBASSY WILL PROVIDE TURKEY
WITH THE BEST ESTIMATE BY U.S. AUTHORITY AS TO THE PROBABLE
RELEASE DATE OF THE SENTENCED PERSON IN THE UNITED STATES.

8. ACTION REQUESTED. WE WOULD APPRECIATE RECEIVING
ANY COMMENTS DEPARTMENT MAY HAVE CONCERNING PROPOSALS
PARA 6 AND 7 PRIOR TO RESUMPTION OF NEGOTIATIONS ON
MONDAY MORNING, AUGUST 28. UNLESS OTHERWISE INSTRUCTED
BY THAT TIME DELEGATION WILL PROCEED AS PROPOSED. DEPARTMENT
MAY WISH TO CONSULT WITH DEPUTY ASSISTANT ATTORNEY GENERAL
JOHN KEENEY IN CRIMINAL DIVISION OF JUSTICE DEPT. AND INFORM
HIM THAT JUSTICE REP ON DELEGATION CONCURS IN PROPOSED ACTION.
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